

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

(1) SINCERE TERRY, (2) MIA
HOGSETT, (3) TYREKE BAKER,
(4) PRESTON NABORS, (5) TREVOUR
WEBB, and (6) AUSTIN MACK,

Plaintiffs,

v.

(1) CITY OF OKLAHOMA CITY,
OKLAHOMA, a municipality,
(2) THOMAS VANNORT, in his
individual capacity, (3) DAVID
PRATER¹, in his individual and official
capacities, and (4) DEFENDANT DOES
1-10, in their individual capacities,

Defendants.

Case No. 5:22-cv-522-G

PLAINTIFFS' NOTICE OF SUPPLEMENTAL AUTHORITY

Pursuant to Rule 7.1(m) of the Local Court Rules for the Western District of Oklahoma, Plaintiffs Sincere Terry, Mia Hogsett, Tyreke Baker, Preston Nabors, Trevour Webb, and Austin Mack respectfully provide this Notice of Supplemental Authority in further support of Plaintiffs' Consolidated Memorandum of Law in Opposition to All Defendants' Motions to Dismiss the Amended Complaint, filed November 2, 2022 (Dkt. No. 45).

¹ Please take notice that, pursuant to Fed. R. Civ. P. 25(d), Defendants have been substituted. Vicki Behenna assumed the role of District Attorney of Oklahoma County on January 2, 2023, and is therefore automatically substituted in her official capacity for Defendant David Prater in his official capacity as Oklahoma County District Attorney.

In *Graff v. Aberdeen Enterprizes, II, Inc.*, 65 F. 4th 500 (10th Cir. 2023)², the Tenth Circuit explored the narrow scope of the application of the Supreme Court’s decision in *Heck v. Humphrey*, 512 U.S. 477 (1994) to bar federal civil rights claims. *See Graff*, 65 F. 4th at 519-22. In *Graff*, the Tenth Circuit reaffirmed these principles, holding that “the *Heck* bar only applies when the potential conflict animating the rule exists.” *Id.* at 520. The *Graff* court rejected defendants’ arguments for an expansive application of *Heck*, explaining that a “§ 1983 action implicates *Heck* only as it relates to the conviction that it would be *directly* invalidating.” *Id.* at 522 (emphasis added) (quoting *Butler v. Compton*, 482 F.3d 1277, 1279 (10th Cir. 2007)). *Graff* is relevant to Plaintiffs’ contention that *Heck* does not bar their claims. (See Dkt. No. 45, at 69.)

Additionally, in *Counterman v. Colorado*, 143 S.Ct. 2106 (2023)³, the Supreme Court held that to hold a defendant liable under a “true threat” theory, a state must demonstrate that the defendant had a subjective understanding of the threatening nature of their statements rising to the level of recklessness, *i.e.*, that “the defendant consciously disregarded a substantial risk that his communications would be viewed as threatening violence.” *Id.* at 2111-12. *Counterman* is relevant to Plaintiffs’ contention that none of their statements during their encounter with OCPD Master Sergeant Nicholas Wald or while seeking to file a complaint against Wald at OCPD headquarters constituted true threats. (See Dkt. No. 45, at 9-10.)

² A copy of the *Graff v. Aberdeen Enterprizes, II, Inc.* decision is attached hereto as Exhibit 1.

³ A copy of the *Counterman v. Colorado* decision is attached hereto as Exhibit 2.

Dated: September 13, 2022

Respectfully submitted,

/s/ Megan Lambert

Megan Lambert

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CERTIFICATE OF SERVICE

I hereby certify that on September 13, 2022, I electronically transmitted this filing to the Clerk of Court using the ECF System, which effects service upon all counsel of record.

Respectfully submitted,

/s/ Megan Lambert

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